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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri H.L. Dattu, C.J.

Writ Petition No.3538 of 1997

PETITIONER : Om Kumar Arya, son of Late Shri H.S. Arya, aged about 37 years, Occupation Pharmacist in N.T.P.C. Hospital, Korba, resident of B-1219, Krishna Vihar, at P.O. Jamnipali, (NTPC Township) Distt: Bilaspur M.P.

Vs.

RESPONDENTS

1. N.T.P.C. Korba, through its General, Manager, at P.O. Vikas Bhawan, NTPC Korba, Distt: Bilaspur M.P.
2. Chief Personnel Manager, NTPC, KSTPS, Vikas Bhawan, Korba, Distt: Bilaspur M.P.
3. Chairman, and Managing Director, (C.M.D.) NTPC Ltd, Corporate Centre, scope complex NTPC Bhawan 7 Institutional Area Lodhi Road, New Delhi 110003.
4. Mr. B. Jha Manager, (P&A), NTPC, KSTPS Vikas Bhawan, Korba, Distt: Bilaspur M.P.
5. Chief Medical Officer, NTPC, Hospital Jamnipali, Korba, P.O. Jamnipali, Distt: Bilaspur M.P. 495 450.
6. N.T.P.C. Farakka through its General Manager at Farrakka West Bengal
7. Sailen Mukharjee, son of not known, working as Pharmacist in executive Cadre, i.e. E-1 at NTPC Hospital Farakka (West Bengal)
8. Beni Madhav Gupta, son of not known, Administrative Officer, NTPC, Hospital Jamnipali Distt: Bilaspur M.P. 495 450.

Writ Petition under Articles 226/227 of the Constitution of India.

Present: Shri DN Prajapati, counsel for the petitioner.
Shri PS Koshy, counsel for respondents No.1 to 6 & 8.

ORAL ORDER
(Passed on 3rd May, 2007)

The petitioner is an employee of respondents - NTPC, Korba. The respondents had issued an advertisement in a newspaper inviting applications for appointment to the post of Pharmacist Gr.-IV. Pursuant to the advertisement so issued, the petitioner was one of the applicants. Since he had the necessary qualifications he was appointed as Pharmacist Gr.-IV by issuing a letter of appointment dated 04.09.1984. The petitioner joined service on 05.10.1984. It is

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the case of the petitioner before this Court that he possesses Engineering Diploma, Pharmacist Diploma and P.G. Diploma and he should be promoted to the category of the Supervisory Gr.-7. Since his representation filed before the authorities was not considered in a proper perspective, the petitioner is before this Court, in this writ petition filed under Article 226 of the Constitution of India. The reliefs sought for by the petitioner are as under :

> " 1. That the respondents be commanded by a writ of mandamus to produce all service rules/internal circulars applicable to the induction and promotion of a diploma pharmacist in the NTPC.
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> 2. The respondent No.6 may kindly be commanded by a writ of mandamus to produce all service records along with service book relating to respondent No.7 who is appointed in the Supervisory cadre in the establishment of NTPC, Farakka.
>
> 3. That the respondents No.1,2,3,4 and 5 may kindly be commanded by a writ of mandamus to grant benefit of appointment at S-1 level which is the induction level for diploma holders to the petitioner in the cadre of S-1 cadre and also subsequent promotion benefits in the executive cadre on the time bound promotion for which the petitioner is entitled i.e. at the level of executive Cr.IV E-4 and above.
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> 4. That the petitioner be also paid the entire service benefits including back-wages from the date of appointment taking his appointment in the supervisory cadre. Weightage of the prior experience should also be given to the petitioner."

(2) Learned counsel for the petitioner Shri D.N. Prajapati would submit that since the petitioner had Pharmacist Diploma qualification and also P.G. Diploma, he should have been appointed to the post of S-1 category. Apart from that, he would submit that though a request was made to promote the petitioner to the next higher cadre in supervisory cadre, the same has not been considered by the respondents, therefore, he requests this Court to issue an appropriate direction to the respondents. Along with the writ petition, he has also produced the chart

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which is maintained by the respondents for promotion to next higher cadre. The chart pertains to mechanical maintenance grade employees.

(3) Respondents have filed their detailed counter. In that, firstly they submit that the advertised post was Pharmacist Gr.-IV and the petitioner had applied for the said post. Taking into consideration the educational qualifications of the petitioner at the time of initial appointment, they have appointed him to the post of Pharmacist Gr.-IV which is an advertised post. Apart from that, they have also produced the channel of promotion for Pharmacists working in NTPC.

(4) The one and only question that requires to be considered by this Court is whether the petitioner is justified in claiming for appointment to the Supervisory cadre, when the advertisement itself was for the post of Pharmacist Gr.IV. Secondly, whether the petitioner has any right to claim for promotion to the post of Supervisory cadre.

(5) The respondents along with their return have filed the advertisement issued by them sometime in the year 1984 inviting applications for appointment to the post of Pharmacist Gr.IV. The petitioner though had higher qualification, the respondents had thought it fit to appoint him on the aforesaid post since the advertised post was only Pharmacist Gr. IV. The petitioner had accepted the post offered to him by the respondents in the letter of appointment issued on 04.09.1984 and further he had joined the service of respondents on 05.10.1984. It is for the first time in the year 1997 the petitioner had made out a grievance that since he had better educational qualifications, he should have been appointed to the post of Supervisory cadre. In my opinion, the submission made by learned counsel for the petitioner and also the assertion made by the petitioner in the writ petition has no merit whatsoever. If for any reason, the petitioner was aggrieved by the appointment that was issued sometime in the year 1984, he should have called in question the same before an appropriate forum within a reasonable time. By filing a writ petition in the year 1997, the

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petitioner cannot question the appointment that was made by the respondents in the year 1984. On that ground alone, the petitioner requires to be rejected.

(6) The respondents have produced along with their return the channel of promotion for the post of Pharmacist Gr.IV. The next promotional post of Pharmacist Gr.IV is Pharmacist Gr.III and Pharmacist Gr.II and if a person possesses Pharmacist Diploma and also successful in the interview that would be conducted by the employer, then he can be posted to the post of Junior Supervisor S-1 grade. The next promotional post of Junior Supervisor S-1 grade is Supervisor Grade-II, Supervisor Grade-I etc.

(7) The petitioner merely because he possesses a Pharmacist Diploma qualification cannot either seek promotion to the next promotional post of Supervisory cadre. He has to wait for his turn. It is only when he comes within the zone of consideration for promotion to the next higher cadre and if his case is not considered by the respondents then only he can make out grievance before this Court. In that view of the matter, the relief sought for by the petitioner cannot be granted by this Court. Accordingly, the writ petition deserves to be rejected and it is rejected. Ordered accordingly.

Sd/-
Chief Justice